

DISCUSSION WITH FURTHER FINDINGS

The Roof Conditions Cited in Order No. 2144040

The cited standard, 30 CFR § 75.200, requires, in part, that "the roof and ribs of all active underground roadways, travelways, and working places be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs." I credit Inspector Thompson's testimony as to the roof conditions and find that the roof support in the No. 7 seal entry was inadequate to protect persons from roof falls. There were broken timbers that had not been replaced, contrary to Respondent's roof control plan. The roof was breaking or damaging the seal, and methane was leaking into the active working area. This was a dangerous condition.

Respondent was negligent in allowing this violation to exist. Dust on the broken posts indicated that the condition had been in existence for a long time. In addition, Respondent's witness McClure testified that the condition of broken timbers was longstanding, having been in existence when he started work there in August of 1984. Although McClure was of the opinion that the unbroken timbers and cribs provided adequate roof support, he was aware that the roof control plan required that broken timbers be replaced and that there were some broken timbers that had not been replaced as of October 11, 1984.

The Preshift Examination Cited in Order No. 2144047

The cited standard, 30 CFR § 75.303, requires that within three hours immediately preceding the beginning of any shift a certified person examine all active workings of the mine, examine seals to determine whether they are functioning properly, and examine active roadways, travelways and approaches to abandoned areas. Dayton Lane testified that he was the certified person responsible for conducting the preshift examination of the Main East seals on October 11, 1984. He conducted a preshift examination between 5:00 and 5:45 a.m. Although he was aware of the broken timbers, roof fall, and cracks in the roof in the area of the No. 7 seal, he did not report these conditions in his preshift report. Instead, he noted "clear" in the preshift mine examiner's book for that day (Ex. G-15, p. 4). It was his opinion that the roof was adequately supported.